



The Comptroller General
of the United States

Washington, D.C. 20548

Support - P.

Decision

Matter of: Gulton Industries, Inc.

File: B-227132

Date: August 19, 1987

DIGEST

Protest against negative responsibility determination is denied where the determination was based on a negative preaward survey report that found protester had an unsatisfactory record of prior performance, and the record contains documentation that provides a reasonable basis for the preaward survey finding and the contracting officer's determination.

DECISION

Gulton Industries, Inc., protests the Department of the Army's rejection of its low bid under invitation for bids (IFB) No. DAAB07-87-K018, for quantities of liner servo accelerometers. The Army rejected Gulton's apparent low bid after receiving a Defense Contract Administration Services Management Area (DCASMA) preaward survey (PAS) report recommending against award because of Gulton's unsatisfactory production capability, performance record and its ability to meet schedules. Gulton contends that the DCASMA report was biased and that a more favorable report could have resulted had DCASMA viewed the PAS differently.

We deny the protest.

The PAS unsatisfactory rating was based on an excessive number of current and past contract delivery delinquencies. Specifically, the PAS showed delinquencies of 20 to 40 percent of open government contracts for the first 5 months of 1987. Prior to making the nonresponsibility determination, the contracting officer and the cognizant contract specialist held numerous discussions with DCASMA to verify the current status of contract delinquencies. On May 11, the Army awarded the contract to Systron-Donner Corporation Inertial Division, the only other bidder.

Gulton concedes that it has been delinquent in some of its deliveries, but contends that the delinquency percentages based on open contracts is misleading since the total number of unit delinquencies and the total dollar delinquencies both are below 5 percent. Gulton considers the total order delinquencies to be less representative of its actual performance because of the varying sizes of the orders. Gulton also points out that, viewed in terms of both government and commercial (the majority of Gulton's business) contracts, its delinquencies on direct federal procurements represent less than 2 percent of its total annual business. Further, Gulton states that since being placed in the Contractor Improvement Program (to improve its delinquency situation) it has shown a 50 percent improvement in its contract delinquencies since November 1986. Gulton considers any delinquency problem it may have to be minor.

A contracting agency has broad discretion in making responsibility determinations, which must of necessity be a matter of business judgment. Costec Associates, B-215827, Dec. 5, 1984, 84-2 CPD 626. Such judgments must, of course, be based on fact and reached in good faith; however, it is only proper that they be left to the administrative discretion of the agency involved as the agency must bear the brunt of difficulties experienced in obtaining the required performance. Urban Masonry Corp., B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48. Therefore, we will not question a nonresponsibility determination unless the protester demonstrates bad faith by the agency or a lack of any reasonable basis for the determination. System Development Corp., B-212624, Dec. 5, 1983, 83-2 CPD ¶ 644. Gulton has not made the necessary showing here.

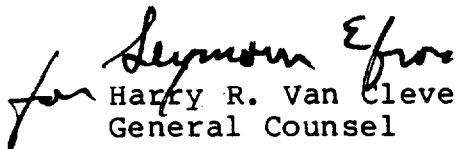
While Gulton may consider the percentages as calculated by DCASMA misleading as to its capabilities, we find DCASMA's and the contracting officer's reliance on these figures unobjectionable, and well within the agency's administrative discretion. There is no regulatory or other requirement that an agency consider delinquency data or other PAS information in the most favorable light to the firm. Rather, as is implicit in the standard set forth above, the contracting officer must use his business judgment in determining just how much weight to give each bit of information. Here, Gulton was delinquent on a significant percentage of current and prior government contracts (14 out of 21 in the year prior to the PAS), and DCASMA and the contracting officer obviously considered these percentages more indicative of Gulton's capabilities than other percentages and information. Again, we find nothing improper in a negative responsibility determination based on these percentages.

Gulton's inclusion in and possible improvement under the Contractor Improvement Program certainly was a factor to be considered by the contracting officer, and the record shows it was considered negatively; the PAS reported that the firm did not have any realistic plan to reduce delinquencies in the future.

Gulton asserts that there were some circumstances beyond its control (for instance, delays by subcontractor vendors in furnishing support items) that should excuse its prior performance deficiencies. It is not evident from Gulton's submissions or the record, however, that Gulton improperly was held responsible for any specific contract delinquency. In any case, whether Gulton's prior performance deficiencies somehow were excusable ultimately is a matter of contract administration, not for resolution under our Bid Protest Regulations. See 4 C.F.R. § 21.3(f)(1) (1987); Tangfeldt Wood Products, Inc., B-207688, May 3, 1983, 83-1 CPD ¶ 468.

Gulton contends that the nonresponsibility determination was made in bad faith because the agency apparently ordered a PAS in the first place only because Systron-Donner furnished the agency with information disparaging Gulton. This charge is unfounded. While Systron-Donner did present the Army with negative information concerning Gulton after bid opening, and while DCASMA did look into it during the PAS, the information related to Gulton's technical capability, an area in which Gulton was rated satisfactory. The fact that Gulton, as we have concluded, properly was found nonresponsible based on the entirely different matter of its performance history certainly is not evidence of agency bad faith.

The protest is denied.


Harry R. Van Cleve
General Counsel